IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 2905

CLALLAM LUMBER COMPANY, a Corporation,
Appellant,

vs.

CLALLAM COUNTY, a Municipal Corporation, and Clifford L. Babcock, Treasurer,
Appellees.

No. 2906

CHARLES H. RUDDOCK and TIMOTHY H. McCARTHY,
Appellants,

vs.

CLALLAM COUNTY, a Municipal Corporation, and Clifford L. Babcock, Treasurer,
Appellees.

No. 2907

CLALLAM LUMBER COMPANY, a Corporation,
Appellant,

vs.

CLALLAM COUNTY, a Municipal Corporation, and Herbert H. Wood, Treasurer,
Appellees.

No. 2908

CHARLES H. RUDDOCK and TIMOTHY H. McCARTHY,
Appellants,

vs.

CLALLAM COUNTY, a Municipal Corporation, and Herbert H. Wood, Treasurer,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

REPLY BRIEF OF APPELLANTS

EARLE & STEINERT,
PETERS & POWELL,
Attorneys for Appellants.
Seattle, Wash.

BUTTERFIELD & KEENEY,
Of Counsel.
Grand Rapids, Mich.

SHERMAN PRINTING AND BINDING CO., SEATTLE, WASH.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 2905

CLALLAM LUMBER COMPANY, a Corporation,
Appellant,

vs.

CLALLAM COUNTY, a Municipal Corporation, and CLIFFORD L. BABCOCK, Treasurer,
Appellees

No. 2906

CHARLES H. RUDDOCK and TIMOTHY H. McCARTHY,
Appellants,

vs.

CLALLAM COUNTY, a Municipal Corporation, and CLIFFORD L. BABCOCK, Treasurer,
Appellees

No. 2907

CLALLAM LUMBER COMPANY, a Corporation,
Appellant,

vs.

CLALLAM COUNTY, a Municipal Corporation, and HERBERT H. WOOD, Treasurer,
Appellees

No. 2908

CHARLES H. RUDDOCK and TIMOTHY H. McCARTHY,
Appellants,

vs.

CLALLAM COUNTY, a Municipal Corporation, and HERBERT H. WOOD, Treasurer,
Appellees

REPLY BRIEF OF APPELLANTS

While it is impossible for the appellants in the short time before argument to reply fully to the voluminous brief of the appellees, they desire at all events to cover several points which they believe will materially assist the Court in a review of these cases.

In the first place, the appellees, at pages 196 to 198 of their brief, charge the appellants with having erroneously set out in their brief, at pages 78 to 80, the provisions of Section 9200 of Remington and Ballinger's Code relative to the duties of the Board of Equalization.

It is true, as claimed by the appellees, that this section as set out in our brief—pages 78 to 80—is the statute as amended in 1915, and not as it stood in 1913 and 1914, when the assessments complained of were made

The error in the brief arose in this wise: Our clerk in transcribing for the printer Section 9200 of Remington and Ballinger's Code, by an oversight took this section from Remington's Code and Statutes, Volume 2, pages 3584-5-6, which was published in 1916, and included amendments of the Legislature of 1915, instead of a copy of the section as it appears in Remington and Ballinger's Code published in 1910, which did not, of course, contain the amendments of 1915.

The variance complained of by the appellees is the following: The law as it stood in 1913 and 1914, in

setting out the duties of the Board of Equalization, contains the following at the end of the first section of the law:

> "They shall examine and compare the returns of the assessment of the property of the county, and proceed to equalize the same so that each tract or lot of real property and each article or class of personal property shall be entered on the assessment list at its true and fair value, subject to the following rules."

Whereas, by the amendment of 1915, the law now reads:

> "They shall examine and compare the returns of the assessment of the property of the county, and proceed to equalize the same so that each tract or lot of real property and each article or class of personal property shall be entered on the assessment list at its true and fair value *according to the measure of value used by the county assessor in such assessment year,* and subject to the following rules."

The words above italicized were added by the law of 1915, and therefore, of course, are not applicable to assessments made in 1913 and 1914.

This mistake, if material to the matter under discussion in our brief in chief, was, we submit, against our own interest and in favor of the appellees and we are the more indebted to them for straightening the matter out.

Section 9200 was referred to by us to show that the Board of Equalization in our taxing system was a

quasi judicial body, that its members had an active duty to perform calling for the exercise of independent inquiry and judgment, and that the assessment roll made up and returned by the assessor did not become a binding assessment or a completed official act until passed upon in a quasi judicial manner by this Board of Equalization.

We showed that three out of the five members of this board, including its chairman, knew nothing about the basis at which property had been assessed in the roll by the assessor or the rate of assessment as to whether it was assessed at fifty per cent of its actual value or one hundred per cent, the fourth member of the board being the assessor himself; that they merely O. K.'d in total ignorance without inquiry the assessment rolls handed up to them by the assessor.

We believe that the statute as amended in 1915 required the exercise of discretion, independent judgment and intelligent examination by the Board of Equalization of the rolls presented to them in requiring the board to see that the property, real and personal, was "entered on the assessment list at its true and fair value, according to the measure of value used by the county assessor in such assessment year, and subject to the following rules."

We are satisfied that the statute as it stood in 1913 and 1914 imposed these powers, these duties and this

function on the Board of Equalization by requirng them to see that real and personal property "shall be entered on the assessment list at its true and fair value, subject to the following rules."

As a matter of fact, counsel for the appellees have been equally unfortunate in transcribing this Section 9200 as it stood in 1913 and 1914 by omitting therefrom the following. Appellees' brief, page 197, the section actually reads as follows: "Third. They shall raise the valuation of each class of personal property which in their opinion is returned below its true and fair value *to such price or sum as they believe to be the true and fair value thereof.* * * *"

The above words italicized are omitted in the appellees' copy of the section.

Also on page 199, counsel by oversight or involuntary inspiration, made the section read: "Provided, that no taxes, except special taxes, shall be extended upon the *payrolls* until the property valuations are equalized by the State Board of Equalization for the purpose of raising the state revenue." The word "payrolls," according to the text, should have been "taxrolls."

With this explanation, no doubt counsel for appellees will withdraw the insinuation of any intentional misquoting of the statute by ourselves, as probably hastily indicated in their brief.

II

It is the law of this state that a property owner whose property has been assessed at a rate in excess of other classes of property in the county, arbitrarily or through capriciousness of the assessing officials, or intentional discrimination, may obtain relief although his property is assessed in the same manner and at the same rate as other property in its class and although it is not assessed at more than its actual value.

The appellees contend for the contrary to this proposition throughout their brief, begnning with page 22 and elaborated at pages 156 to 164. The law of this state is found in the following cases:

Andrews vs. King County, 1 Wash. 47.

To the same contention made in that case, the Supreme Court answered:

> "And the fact that plaintiff's property is attempted to be assessed at its par value, will not deprive him of the constitutional guaranty, if by the under-valuaton of other property he is compelled to bear more than his just proportion of the burden of taxation."

State ex rel O. R. & N. Co. vs. Clausen, 63 Wash. 535, was an appeal from the State Board of Equalization which had raised the valuation fixed by the State Railroad Commission. From the judgment of the Trial Court affirming the order of the state board, the relator appealed and the decision was reversed.

The case is of value on the point that a percentage basis of assessment has been recognized and enforced by the Courts. With reference to this the Court says, page 542:

> "It is further contended that, in any event, the value of the property as equalized being less than the value as ascertained by the Tax Commission, the relator is not harmed, because it is not called upon to pay a tax upon its full value. While theoretically all property should be assessed at its full value, it s well known that it is not so; that while the taxing authorities have undertaken to, and have with a greater or less degree of accuracy arrived at that true value, yet a certain percentage is accepted as a basis of valuation for tax purposes. There would be merit in this contention but for the fact that it is admitted that like property of other railroad corporations has not been so assessed. The value as fixed by the Railroad Commission was accepted in all other cases, and to sustain the finding of the Board of Equalization would be to put an unequal burden on the relator, thus violating the guaranties of the Constitution. To these guaranties the Courts cannot be blind."

Savage vs. Pierce County, 68 Wash. 623.

Here the county had valued complainant's property at $98,000, and assesed it at $50,000. The court on objection found that this was a gross over-valuation, that the property was actually worth $42,00, and should have been assessed at not over $26,000, because the county had adopted the system of assesing all other property in the county at sixty per cent. of its true

value. It will be observed that there was no fraud or capriciousness shown in this case.

> "The county officers having adopted a measure of value and applied the same to all property in the county, can in no event be permitted to apply a different measure of value to the property of these respondents for the purpose of measuring the amount of taxes they are required to pay thereon. Uniformity is the highest and most important of all requirements applicable to taxation under our system. * * *"

Spokane & Eastern T. Co. vs. Spokane County, 70 Wash. 48, was a suit brought to enjoin the collection of a tax.

The plaintiff was a banking and trust corporation, the capital stock of which was supposed to be assessed at its full and fair value according to the code. Spokane County had, however, for years assessed all property, real or personal, at 37.42% of its real cash value, except bank stock, which was assesed at 60% of its real value. These facts being stated in the complaint, a demurrer thereto was sustained by the trial court, and the sufficiency of the cause of action therefore squarely presented to the Supreme Court for determination. After quoting the provisions of the State Constitution requiring a uniform and equal rate of assesment, the court says, page 52:

> "As was said in *State ex rel. Wolfe vs. Parmenter,* 50 Wash. 164, 96 Pac. 1047, 19 L. R. A. (N. S.) 707: 'It is just as imperative that taxa-

> tion shall be uniform and equal upon all property as it is that all property shall be taxed.' There is neither uniformity nor equality were all kinds of property save one are, intentionally and in pursuance of a fixed and definite policy, assessed at less than forty per cent. of its full and fair value, whilst that class of property is intentionally assesed at sixty per cent of such value. The facts pleaded do not show an erroneous valuation or a difference in judgment as to a correct measure of value, but rather an intentional and arbitrary discrimination against a particular class of property. Such an arbitrary policy is vicious in principle, violative of the constitution and operates as a constructive fraud upon the rights of the property holder discriminated against." Quoting numerous authorities.

Spokane & Inland E. R. Co. vs. Spokane County, 82 Wash. 24, was an equitable action involving the validity of the tax levy of 1912.

This case also follows *State ex rel. Spokane & Inland E. R. Co. vs. State Board of Equalization,* 75 Wash. 90.

The court says, page 29, quoting and following this case:

> "On the question as to whether, as a basis for the assessment of appellant's property in Spokane County, 42.16 per cent of its value may be taken while other property in the same county is assessed at 32 per cent of its value, that is a question which seems to have been determined in the case of *Spokane & Eastern Trust Co. vs. Spokane County,* 70 Wash. 48, 126 Pac. 54, Ann. Cas. 1914 . 641. In that case, the basis for assessment of bank stock was at a higher rate than other

> property in the county, and this was not due to an erroneous valuation or the difference in judgment as to the correct measure of value, but was due to an intentional and arbitrary discrimination against that particular class of property."

That the law contended for by the appellants is supported by the greater weight of authority in both the federal and state courts generally, is shown in our brief in chief—pages 63 to 73—but it surely is the rule in the State of Washington which we have cited and perhaps repeated in the above cases, and the federal courts would, we respectfully submit, be bound by a practice adopted by the state court with respect to its system of taxation of property within the state.

Respectfully submitted,

EARLE & STEINERT,
PETERS & POWELL,
Attorneys for Appellants.

BUTTERFIELD & KEENEY,
of Grand Rapids, Michigan,
Of Counsel.